to give a remedy which it recognizes as analogus to specific performance. This question is discussed in an interesting monograph by Prof. Williston, 20 HARV. LAW REV. 363.

TORTS—PROXIMATE CAUSE—INTERVENING WRONGFUL ACTS.—The defendants stored explosives in a public highway, in violation of the law. Boys who were accustomed to play near the place carried away some of the explosives, and next day the plaintiff's intestate was killed by their explosion. Plaintiff brought an action for damages for his wrongful death. *Held*, the plaintiff can not recover. *Perry* v. *Rochester Lime Co.* (N. Y.), 113 N. E. 529. See NOTES, p. 137.

TRUSTS—MISAPPROPRIATION OF FUNDS—LIABILITY OF BANK.—An executor kept his individual account in the defendant bank, and the funds of the estate in another bank. At different times he drew checks as executor payable to himself as an individual which he deposited to his individual account, until his entire account was composed of trust funds. He then drew a check on the defendant bank to pay a debt which he owed it. A shortage being found in the executor's accounts, the defendant was sued for all trust funds deposited with it. *Held*, the bank is liable for the amount of the debt paid to it and all funds deposited with it after such payment. *Bischoff* v. *Yorkville Bank* (N. Y.). 112 N. E. 759.

There are three ways in which a bank may incur liability for the misappropriation by a fiduciary of money deposited with it: by breach of a contract, express or implied, between itself and the owner of the fund; by appropriating the fund to the payment of a debt owed it by the fiduciary; and by knowingly assisting the fiduciary to perpetrate a fraud. These three grounds of liability are distinct; but in a given case the bank's liability may be placed on any one or more of them.

That the bank can be held liable for the breach of its contract is clear, and gives little trouble. *Am. Nat. Bank* v. *Fidelity, etc., Co.,* 129 Ga 126, 58 S. E. 867, 12 Ann. Cas. 666. Thus, a bank was held liable for the amount of a check drawn to the order of its cashier to be deposited to the account of a trustee but which the bank deposited to his individual account. *Duckett* v. *National Mechanics Bank,* 86 Md. 400, 38 Atl. 983, 39 L. R. A. 84, 63 Am. St. Rep. 513.

In order to be held liable to the true owner for misappropriated funds which were used to pay a debt owed it, a bank must, by the weight of authority, know, or have reasonable cause to believe, that the funds were of a fiduciary character. *Wood* v. *Boylston Nat. Bank,* 129 Mass. 358, 37 Am. Rep. 366. But in such cases very slight circumstances are sufficient to put the bank on notice, and when a check which is signed by a person in the capacity of a trustee is presented in payment of the bank's own claim, it is thereby put on notice and must ascertain at its peril the validity of the transaction. *Ward* v. *City Trust Co.,* 192 N. Y. 61, 84 N. E. 585. And even where the bank has no notice, it seems that the true owner may recover the funds if the bank has not changed its position in reliance upon the apparent ownership of the funds, notwith-

standing the fact that they have been technically applied to a debt owed it by the fiduciary. *Wilson* v. *Smith,* 3 How. 763; *Cady* v. *South Omaha Nat. Bank,* 46 Neb. 756, 65 N. W. 906. Where the true character of the fund is known to the bank it may be recovered on the broad general ground that misappropriated funds may be recovered from one receiving them without value, and on the further ground that to hold otherwise would be to allow one to profit by his own misconduct. *Allen* v. *Puritan Trust Co.,* 211 Mass. 409, 97 N. E. 916, L. R. A. 1915C, 518; *Gerard* v. *McCormick,* 130 N. Y. 261, 29 N. E. 115, 14 L. R. A. 234.

Where the bank receives no benefit from the misappropriation of the funds it can only be held liable on the ground that it is a party to the fraud, and in order for this to be the case the bank must, of course, have notice of the intended misappropriation. *Newburyport* v. *First Nat. Bank,* 216 Mass. 304, 103 N. E. 782. And it is held by the weight of authority that the mere fact that that a fiduciary draws a check in his fiduciary capacity which he deposits to his individual account is not notice to the bank, for it will be presumed that he is acting honestly. *U. S., etc., Co.* v. *First Nat. Bank,* 18 Cal. App. 437, 123 Pac. 352. While this may be true where the check is drawn on a different bank, by which it is honored, or where such conduct on his part has been sanctioned in the past, it seems that the mere form of the check should be notice to a bank in which both the trust funds and the individual account of the trustee are deposited. *Havana C. R. Co.* v. *Cent. Trust Co.,* 204 Fed. 546, L. R. A. 1915B, 715; *Farmers Loan & T. Co.* v. *Fidelity Trust Co.,* 30 C. C. A. 247, 86 Fed. 541. Cases adhering to the former view consider slight additional circumstances sufficient to put the bank on notice. See *Miller* v. *Hobdy* (Tex. Civ. App.), 159 S. W. 96. The facts of the principal case were amply sufficient to put the bank on notice.